

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No.S-617 of 2023

Applicant: Manzoor Ahmed Bhutto, through
Mr. Aftab Hussain Bhutto,
Advocate

Respondent No.3: Sultan Ahmed through Mr. Abdul
Ahad Buriro, Advocate

State: Through Mr. Khaleel Ahmed
Maitlo, DPG

Date of hearing: **06.10.2023**
Date of decision: **06.10.2023**

ORDER

Arbab Ali Hakro, J: Through this application, the applicant has assailed the order dated 29.08.2023, passed by learned Additional Sessions Judge-II/Ex-Officio Justice of Peace, Ghotki, in Crl. Misc. Appl. No.2303/2023, whereby allowing application u/s 22-A (6)(i) & 22-B Cr.P.C filed by the Respondent No.3, directed the SHO concerned to record the statement of the applicant and register the FIR against the proposed accused, if a cognizance offence is made out, hence this application.

2. Learned Counsel for the applicant has contended that no such incident as alleged took place, and the story narrated by Respondent No.3 in the memo of application u/s 22-A(6)(i) & 22-B Cr.P.C is false and concocted one; that there is matrimonial as well as a civil dispute between the parties and earlier an application of similar nature has already been dismissed; that no medical proof whatsoever has been produced by Respondent No.3; that alternate remedy of direct complaint is available with the respondent No.3; that the trial Court without considering such facts passed the impugned order in hasty manner, same being illegal is liable to be set aside. In support of his contentions, he has relied upon

Muhammad Zameer's case and another vs. The State and another (2022 MLD 1059).

3. On the other hand, learned Counsel for respondent No.3 supporting the impugned order has sought for dismissal of the instant application contending that the applicant has illegally and unlawfully trespassed into the house of Respondent No.3, insulted them, damaged household articles and caused butt injury to respondent's brother Khadim Hussain and such injury has been certified by the medical officer.

4. Learned DPG has also supported the impugned order and submits that cognizance offence is made out from the contents of the application.

5. I have heard learned Counsel for the parties and have gone through the material available on record and impugned order.

6. From perusal of the record, it appears that after the occurrence, the complainant/respondent No.3 approached the concerned Police Station for registration of the case against the proposed accused-applicant, but no needful was done; hence, he approached the concerned Justice of Peace, by filing application u/s 22-A, & B Cr.P.C, for a direction to the concerned SHO for registration of FIR. Learned Justice of Peace, after hearing the parties, has passed the following order:-

"6. The material presented before me has brought me to the considered conclusion that the allegations levelled by applicant deserve due probe and this is a fit case for issuing direction to police for recording statement. Apparently, allegations of applicant are disclosing story of offence but his statement was not recorded by concerned SHO. As per memo of application, applicant approached concerned SHO but his statement was not recorded.

All the available material present on record and the information disclosed by applicant are suggesting that matter should be investigated/ inquired regarding commission of offence. In such circumstances, SHO is bound under section 154 Cr.P.C to record statement of applicant as held by Honourable Supreme Court of Pakistan in the case of Muhammad Bashir vs. Station

House Officer, Okara Cantt and others (PLD 2007 Supreme Court 539)

8. *During investigation/ enquiry, if it comes on screen that present applicant got a FIR registered without true substance, than proceedings may be initiated against the applicant under Section 182 PPC*

9. *Although, police is required to investigate all allegations of commission of offence, yet no innocent person should be arrested unless some tangible material becomes available to police, which can cause a reasonable suspicion of involvement of any person in offence, as laid down by Hon'ble Supreme Court in the case of Govt. of Sindh vs. Raeesa Farooq (1994 SCMR 1283)".*

7. SHO is bound u/s 154 Cr.P.C to record the statement of the applicant. There is no provision in any law, including section 154 or 155 of Cr.P.C which authorizes an officer in charge of a Police Station to hold an enquiry or assess the correctness or falsity of the information received by him before complying with command of the said provision which obliged him to reduce the same into writing irrespective of the fact whether such information was true or otherwise. Reliance is placed on the case of **Muhammad Bashir v. Station House Officer Okara Cantt and others (PLD 2007 Supreme Court 539)**.

8. Contention of learned Counsel for the applicant that no such incident as alleged has occurred does not weigh until and unless proper investigation/enquiry is carried out in the matter; therefore, it cannot be presumed whether such incident has happened or not. On this behalf, the learned Ex-officio Justice of the Peace has passed appropriate directions to the police authorities concerned that police are required to investigate all allegations of commission of offence. Yet, no innocent person should be arrested unless some tangible material becomes available to police.

9. With regard to contention of learned Counsel for the applicant that respondent No.3 can file a direct complaint under Section 200 Cr.P.C before the Magistrate has no substance as the scope of Section 200 Cr.P.C has been described by the legislature that "**a Magistrate taking**

cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate”, and in this regard, learned Ex-Officio Justice of Peace has already mentioned in the impugned order that truth hood or falsehood of allegations can only be determined after due inquiry/investigation. Moreover, there are sufficient safeguards in the law against false implication in criminal cases with an ulterior motive. After all, following registration of the case, an investigation into the case is to be conducted by the local police, including collection of evidence either proving or disproving the case by the respondent against the applicant. After the collection of evidence, if the report is proven false and baseless, the police have ample powers to cancel the FIR and proceed against the lodger of the FIR/complainant under the law for lodging a false and concocted report for the harassment of the applicant.

10. No doubt, this Court is empowered to review or set aside an order passed under section 22-A, Cr.P.C, but such powers could only be exercised if the Ex-Officio Justice of Peace has not applied its judicial mind or has overlooked some material aspects of the case.

11. In these circumstances, I am of the view that the Ex-Officio Justice of Peace issuing such direction, by way of impugned order, has committed no illegality, which may call for interference with it, by this Court by way of instant Crl. Miscellaneous Application u/s 561-A Cr. P.C; it is dismissed, leaving the applicant to prove his innocence by joining the investigation after registration of FIR, if so advised to him.

JUDGE